

LEGISLATIVE BILL 308

Approved by the Governor March 10, 2011

Introduced by Urban Affairs Committee: McGill, 26, Chairperson; Coash, 27; Cook, 13; Krist, 10; Schumacher, 22; Smith, 14.

FOR AN ACT relating to municipalities; to amend sections 17-107 and 17-208, Revised Statutes Cumulative Supplement, 2010; to provide for terms of office for certain officers; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 17-107, Revised Statutes Cumulative Supplement, 2010, is amended to read:

17-107 (1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall take office on the date of the first regular meeting of the city council held in December following the statewide general election. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568.

(2) The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The terms of office for all officers, except regular police officers, appointed by the mayor and confirmed by the council shall be established by the city council by ordinance. The ordinance shall provide that either (a) the officers hold the office to which they have been appointed until the end of the mayor's term of office and until their successors are appointed and qualified unless sooner removed or (b) the officers hold office for one year unless sooner removed.

(3) (a) The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council may be removed, demoted, or suspended at any time by the mayor as provided in ~~subsection (2) of this section.~~ subdivision (b) of this subsection. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

~~(2)~~ (b) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: ~~(a)~~ (i) Provisions for giving notice and a copy of the written accusation to the police officer; ~~(b)~~ (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; ~~(c)~~ (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and ~~(d)~~ (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this

section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

~~(3)~~ (c) This ~~section~~ subsection does not apply to a police officer during his or her probationary period.

Sec. 2. Section 17-208, Revised Statutes Cumulative Supplement, 2010, is amended to read:

17-208 ~~(1)(a)~~ (1) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal or chief of police and other such officers as shall be required by ordinance or otherwise required by law.

(2)(a) ~~The Pursuant to subsection (2) of this section,~~ the village marshal or chief of police or any other police officer may appeal to the village board his or her removal, demotion, or suspension with or without pay. After a hearing, the village board may uphold, reverse, or modify the action.

(b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police, upon the written accusation of the village marshal or chief of police, the chairperson, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the action. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

~~(2)~~ (3) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal or chief of police, the marshal or chief of police may be appointed to the board and serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations.

(4) The village clerk, treasurer, attorney, overseer of the streets, members of the board of health, and other appointed officers, except regular police officers, ~~The appointees~~ shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Sec. 3. Original sections 17-107 and 17-208, Revised Statutes Cumulative Supplement, 2010, are repealed.